Supreme Court, U.S.
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No. 89-1981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

HOWARD E. WILLIAMS

PETITIONER/APPELLANT

v.

CITY OF NORTHPORT,

RESPONDANTS/DEFENDANTS

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

REPLY BRIEF OF PETITIONER/APPELLANT

FOR PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A FINAL JUDGMENT of the Supreme Court of Alabama denying Writ of Certiorari to Alabama Court of Civil Appeals is in violation of prior decision of the Supreme Court of Alabama concerning mental competency being determined by jury and and said final judgment deprives the Petitioner of his property and liberty rights without Due Process of law guaranteed to him by Fifth and Fourteenth Amendments to the United States Constitution?

II. WHETHER A FINAL JUDGMENT of the Supreme Court of Alabama violates the Contract Clause of the United States Constitution when workmen's compensation statutory law requires a judge instead of jury to decide mental competency when an expert witness, a psychiatrist testifies and is uncontroverted?

III. WHETHER A FINAL JUDGMENT of the Supreme Court of Alabama rendered in violation of prior decisions of said Court, deprives Petitioner of the equal protection of the law guaranteed him by the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

Howard E. Williams, Petitioner,

(Appellant and Plaintiff below),

City of Northport, a municipal corporation,

Respondent, (Appellee and Defendant below).

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OPINIONS BELOW

The Petitioner/Appellant incorporates all the statements in the Opinions Below, in the original Petition for Writ for Certiorari from Supreme Court of Alabama brief. Also, the Petitioner/Appellant incorporates all of the Appendix from the original Petition

for Certiorari from Supreme Court of Alabama in the original brief.

From the lower court Petition for Writ of Certiorari, filed Dec. 6, 1989, CIV.6990, from the Court of Civil Appeals of Alabama to the Supreme Court of Alabama in the case, Williams v. City of Northport, is quoted because the Respondants/Appellees made a **false statement** saying the constitutional issue was first mentioned in a rehearing when in reality the constitutional issue

> [see Respondants/Appellee Brief p. 2 **false statement,** "Petitioner's first claims of constitutional infringement were made in a "Petition for **rehearing"**]

was first mentioned in the original "Petition for Writ of Certiorari, p. 4, and states,

> "In reversing Brown case, court cited among other cases, Smith v. Jackson Tool and Die, Inc., 426 F. 2d 5, (5th Cir.

1970) for the general principal that the rules of procedure are liberally construed to achieve justice. In the instant case, it is a question whether the **due process rights under the 14th Amendment to the U.S. Constitution of Mr. Williams was violated** when the law should be changed when an M.D. psychiatrist, Dr. Bryant, is ignored and a brief observation of a judge is substituted for the fact that Mr. Williams, the petitioner, is totally disabled and has to take medicine, and he is not receiving Workmen's Compensation for his medical expenses when he was shot on the job as a police officer. See item #4 below on Kroger case, cited below. [Kroger Co. V. Millsap, 196 So. 2d 380]. (Emphasis added.)

The Petitioner/Appellant also restated his violations of his constitutional rights in the Petition for rehearing, but the first claim of constitutional violation was made

in the original Petition for Writ of Certiorari which was filed in the Court of Civil Appeals of Alabama on Dec. 6, 1990.

JURISDICTION

The Judgment of the Supreme Court of Alabama, of which review and reversal are sought, is the Judgment of the highest court of the state of Alabama and a final Judgment within the meaning of the Jurisdictional statute. Jurisdiction is therefore, invoked under Title 28, United States Code, Section 1257 (3).

Constitutional and Statutory

Provisions Involved

(1) Article I, section 10 of the Constitution of the United States, provides, in part, as follows:

"no state shall ... pass any ... law impairing the obligation of contract

(2) Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

(3) Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(4) Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall ... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The Petitioner/Appellant incorporates the Statement of the Case, and in fact, the entire original Petition for Writ of Certiorari filed in this Honorable Supreme Court of the United States, into this Reply Brief.

At the ore tenus hearing on November 21, 1988, Dr. Bryant testified that Appellant suffers from dysthymic disorder which he described as a depression that has been going on for two years or more and which includes symptoms of insomnia, restlessness, feelings of hopelessness, helplessness, remorse, guilt, tension, and anxiety. The doctor concluded that Appellant was incompetent on April 26, 1988. He had seen the Plaintiff in March and May of 1988. (T6,7). The evidence presented by Dr. Bernard Bryant was uncontroverted. The Appellees presented no evidence at the hearing on the motion.

Trial Court denied the motion on March 2, 1989, concluding that Plaintiff had been competent to settle his case on April 26, 1988.

The Alabama Court of Civil Appeals affirmed, and denied the rehearing. The Alabama Supreme Court of Alabama denied the Writ of Certiorari to the Alabama Court of Civil Appeals.

The Respondants/Appellees mentioned that appendix B attached, which was not attached to the Brief in Opposition to Petition

for Writ of Certiorari, filed by the Respondents. [See p. 1 of Respondents brief... in the first paragraph].

The Respondents created two different issues instead of responding directly to the Petitioner/Appellant's Questions Presented in the Petition for Writ of Certiorari. The issue is not concerning the state worker's compensation statutory scheme per se violating the gurantees of the United States Constitution as stated in Question Presented II, p. i, of the Respondents Brief in Opposition... and the point is the Respondents were suppose to respond to Petition and not to add their own questions presented. [see p. 1 first sentence of second paragraph in Respondent's Brief].

The Respondents made a false statement in the third sentence of the Statement of the Case, p. 1 "Petitioner first claimed a violation of constitutional guarantees in a "petition for rehearing" filed with the clerk of the Alabama Supreme Court.

The point is the Petitioner/Appellant FIRST FILED A VIOLATION OF CONSTITUTIONAL RIGHTS IN THE ORIGINAL PETITION FOR WRIT OF CERTIORARI, FILED IN THE COURT OF CIVIL APPEALS, AND QUOTED IN THIS REPLY BRIEF, p. 2.

REASONS FOR GRANTING THE WRIT

The Petitioner/Appellant incorporates all the Reasons for Granting the Writ from the original Petition for Writ for Certiorari by the Petitioner/Appellant filed in this Honorable Court, and will discuss the Brief in Opposition... by Respondents/Appellees in this Reply Brief.

The Respondents/Appellees have changed the Questions Presented in their Brief in Opposition... from the original Questions Presented [see p. i for original Questions Presented by Petitioner/Appellant], and the Respondents have failed to answer to Petitioner/Appellant original Questions Presented directly.

As stated in the Jurisdiction, p. 4 of this Reply Brief, this Honorable Court has juris-

diction under 28 U.S.C. 1257 (3).

The Respondents have deliberately tried to mislead this Honorable Supreme Court of the United States that the constitutional issue was not mentioned below [see p. 2 of this Reply Brief for quote showing that constitutional issue first mentioned in the original Petition for Writ of Certiorari filed in the Court of Civil Appeals of Alabama.

Replying to respondents Brief in Opposition--

The Petitioner/Appellant did not even use the words "a state statutory scheme as unconstitutional", in the original Questions Presented. In fact, the Respondents/ Appellees have made another false statement in the first Questions Presented stating "no constitutional claims were made", when in fact, as stated above, the Petitioner/Appellant did on p. 4 of the original Petition for Writ of Certiorari filed in the Court of Civil Appeals of Alabama first stated the constitutional claim in a lower appellate court; therefore, the statement "no constitutional claims were made", is a FALSE STATEMENT

MADE BY THE RESPONDENTS/APPELLEES.

The Second Question Presented by the Respondents/Appellees is entirely different from the Questions Presented by the Petitioner/Appellant because the original Questions Presented are not concerning worker's compensation statutes per se as violative of any constitutional gurantees, but that certain state case law such as the Kroger case, [Kroger Co. v. Millsap, 280 Ala. 531, 196 So. 2d 380 (1967)],SHOULD BE OVERTURNED.

From Petitioner's Reply Brief filed in the Supreme Court of Alabama, is quoted, "The Honorable circuit judge abused his discretion in not using the expert testimony from Dr. Bryant [see p. 3 of opinion first paragraph], and the Honorable Judge below substituted his own opinion when the Petitioner was under medication. This Kroger Co. v. Millsap case should be overturned (emphasis added.) when there is a live testimony by expert psychatrist, who stated the truth which was confirmed by the administrative

legal opinion of the condition of the disability of Petitioner which independently confirms the psychiatrist, Dr. Bryant."...

The Petitioner/Appellant is mentioning in this Reply brief that the Respondents/Appellees made a false statement in the Conclusion, on p. 7 of the Brief in Opposition... which stated,

"The decision was based solely on state law concerning expert testimony in such cases,"when in fact in the circuit court there was a live expert witness, Dr. Bryant, a psychiatrist, who testified that the Petitioner/Appellant was incompetent and the Honorable lower court judge in the circuit court ignored the expert witness, when the Petitioner/Appellant was under medication, and the judge, himself, stated that the Petitioner/Appellant, then, Plaintiff, was competent; therefore, the Plaintiff did not receive his medical benefits from Workmen's compensation when he had been shot in the line of duty as a police officer

and has been disabled since being shot on April 26, 1986, and the City of Northport terminated a disabled police officer without the City of Northport through its Workmen's Compensation paying for the medical expenses.

The case, Logan v. Zimmerman Brush Co., 455 U.S. 422, 71 L. Ed 2d 265, 102 S Ct 1148 (1982), which is also about a disabled person, is more in favor of the Petitioner than the Respondents on p. 6 of the Brief in Opposition..."According to recent decisions of this Court, the rights granted the petitioner by the Due Process Clause were not violated." The Petitioner disagrees with this statement, and quotes from the Logan Case, (Also see the original Petition for Writ of Certiorari for constitutional issues in instant case),

"... Under the due process clause of the Fourteenth Amendment, the hallmark of property is an individual entitlement grounded in state law, which cannot be removed except for cause"... Clearly, disabled police officer who was disabled since being shot in the

line of duty deserves his medical expenses to be paid by the City of Northport through Workmen's Compensation.

On p. 2 of the Respondents/Appellees Brief in Opposition... they are again trying to deliberately **mislead** this Honorable court by claiming that Petitioner first claims of constitutional infringement were made in a "petition for rehearing", when in reality the first claim was made on p. 4 of the original Petition for Writ of Certiorari, filed in the Court of Civil Appeals of Alabama, as quoted above. Petitioner's violation of his constitutional rights were mentioned before in the state appellate court.

On p. 3 of the Brief in Opposition... the Petitioner/Appellant is not attacking directly the workmen's compensation statutes, but the case law, Kroger case, because a judge should not ignore expert testimony on competency when the expert witness is a psychiatrist. Respondents/Appellees 1917 statutory scheme law is not applicable in

the instant case because there is no direct attack on any statutory scheme.

Petitioner's constitutional rights were violated when the judge ruled he was competent after a psychiatrist, expert witness, had shown the Petitioner/Appellant was not competent, and disabled.

Respondents law on upholding the worker's compensation act is not applicable since Petitioner/Appellant was not attacking the Workmen's Compensation act, only the Respondents/Appellee's wrote question II in their Brief in Opposiiton... to falsely make it appear that Petitioner was attacking the Workmen's Compensation Act.

The issue is not whether a jury trial is allowed in Workmen's Compensation, but if mental competency is an issue and the judge does not consider expert witnesses such as psychiatrist; then, a jury should determine whether one is competent or not like a jury determines whether in a criminal case whether one is competent or **not in Alabama.**

Therefore, on p. 5 of the Brief in Opposiiton ... the second full paragraph is not applicable.

As far as the other statements made in the Respondents/Appellees brief concerning the Petitioner, the Petitioner incorporates into this Reply Brief all statements and all law presented in the original Petition for Writ of Certiorari.

I. The bottom line is whether there is a double standard for determining whether a person is mentally competent in the State of Alabama since in a criminal case a jury may determine whether a person is mentally competent but not in Workmen's Compensation cases. See Kroger Co. v. Millsap, 280 Al 531, 196 So. 2d 380 (1967) which held that an expert's opinion is not conclusive in the trial court. A judge can make a decision on mental competency in a Workmen's Compensation case even though a pyschiatrist testified and his testimony [Dr. Bernard Bryant in instant case] was uncontroverted.

The Federal courts have said that under the Fifth Amendment to the United States Constitution rights incident to ownership

cannot be divested by actions of the United States without due process of law. Northern Cheyenne Tribe v. Northern Cheyenne, etc. 505 F. 2d 268, (9th Cir. 1974), Southwestern Petroleum Corp. v. Udall, 361 F. 2d 650 (10th Cir. 1966). It is equally important that deprivation by Judicial decision rather than by legislation, be required to comply with due process.

See Exparte Neal, 551 So. 2d 933 (Ala. 1989), which held jury determines mental competency.

II. The second reason the instant case should be remanded because the Supreme Court of Alabama by denying the Writ of Certiorari has violated the Contract Clause of the United States Constitution when Workmen's compensation statutory law requires a judge instead of jury to determine mental competency when an expert witness, a psychiatrist treating the Petitioner, testified as to mental competency and his testimony was uncontroverted. See Sierra Club v. Morton, 405 U.S. 727 (1972). He contends that a controversy exist under Article I, Section 10 of the

United States Constitution.

Lynch v. United States, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934); North Texas Producers Association v. Young, 308 F. 2d 235 (5th Cir.) cert. denied, 83 S. Ct. 874, 372 U.S. 929, 9 L. Ed. 2d 733 (1962). See below the following exceptions to contract rule have developed. For Example, Columbia Railway Gas & Electric Co. v. South Carolina, 261 U.S. 236, 43 S. Ct. 306, (1923) and Terre Hante & Indianapolis Railroad v. Indiana, 194 U.S. 579, 24 S. Ct. 767, 48 L. Ed. 1124 (1904) stand for the proposition that a state decision may, without specific reliance on a statute, by express implication give effect to a subsequent enacted statute and, thus, violate the Constitution. Marinella v. Shell Oil Company, 411 F. 2d 853 (3rd Cir. 1975). Another exception has been recognized in cases in which a changed interpretation of a law,

which was in effect at the time tha contract was made, thus alters the rights of parties to the contract. In Hann v. City of Clinton Oklahoma, 131 F 2d 978 (10th Cir. 1942), [see Petitioners First Brief, p. 13.]

III. The Judgment of the Supreme Court of Alabama is state action and deprives the Petitioner of the equal protection of the law.

The Equal Protection of the law, guaranteed in the Fourteenth Amendment, also has been denied to petitioner by the decision of the Alabama Supreme Court. The application of state law by the Judiciary, even in a lawsuit between private parties, may constitute state action which must conform to the requirements of the Constitution. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); Edwards v. Habib 397 F. 2d 687 (D.C. Cir. 1968). This may be so even though the state is enforcing a Private Negotiated Contract.

Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948); Hosey v. Club van Cartlandt, 299 F. Supp. 501, (S.D.N.Y. 1969).

See Seibold v. Daniels, 337 F. Supp. 210, (U.S. Dist. Court, M.D. Ala., 1972), which held,

"A state statute cannot be construed to obviate a constitutional requirement."

In this instant case, the Alabama Supreme Court deprived Petitioner of his constitutional right[1] to equal protection of the law in refusing to construe Workmen's Compensation mental competency in the same way as in a criminal case.

Therefore, the Kroger case, Kroger Co. v. Millsap, 280 Al 531, 196 So. 2d 380 (1967), should be overruled and a jury allowed to determined mental competency.

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[1] Respondents have written a misleading Conclusion since constitutional claim was made in proceedings below[see this Reply Brief p.2]. The Petitioner has suffered constitutional infringement as stated. The psychiatrist, expert witness testified he was not competent but judge below said was competent; therefore, decision was not based on expert testimony.

CONCLUSION

The Denial of the Writ of Certiorari by the Supreme Court of Alabama, in the instant case, the Petitioner's due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution as well as his equal protection rights under the law and contract rights as stated were violated.

The Petition for Writ of Certiorari should be granted, and the instant case should be reversed and remanded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this Reply Brief was sent to Patricia K. Rea, Clark & Scott,P.C., 3500 Blue Lake Drive, Suite 350, Birmingham, Alabama 35243, and Richard A. Meelheim, Vowell & Meelheim, 1900 Southtrust Tower, Birmingham, Alabama 25203 this 8 day of August 1990.